IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.38 OF 2005

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The New India Assurance
Company Ltd. ...Petitioner

v/s.

M/s.Vidyut Corporation ...Respondent

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Mr.B.B. Saraf i/b Udwadia & Udeshi for the Petitioner.

Mr.Gautam Mehta with Mr.D.R.Mahadik for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 31ST JANUARY,2005

P.C.:

1. By this petition, an interim award made by the arbitral tribunal is challenged. By the interim award dated 25th October, 2004 the arbitral tribunal has directed the Petitioner/Insurance company to make the payment of the amount which was admitted amount, which amount even according to the Petitioner was admittedly due from the Petitioner to the Respondent. Still the payment was not made. Therefore, the arbitral tribunal made the interim award directing the Petitioner to pay the amount which the Petitioner had admitted to be due from it to the Respondent.

2. The challenge to the award is based on clause 30 of the agreement between the parties. Point that is raised is that under the arbitration clause only the amount in relation to which there is a dispute can be adjudicated upon by the arbitrator and therefore the

arbitrator did not get jurisdiction to make the award for payment of admitted amount. In my opinion, this petition makes a dishonest claim. The arbitration clause is worded in such a manner because the agreement between the parties contemplates the Insurance Company making payment of the undisputed amount forthwith, and therefore, the agreement does not contemplate any arbitration in relation to the admitted amount. But because the Insurance Company did not make payment even of the admitted amount, the arbitrator made the interim award. In my opinion, even assuming that the interim award was not strictly within the jurisdiction of the arbitrator, still this court will not be justified in entertaining the petition, because the claim made in the petition is dishonest. The interim award directs the Petitioner to make the payment of certain amounts. The Petitioner does not dispute that this amount is due from the Petitioner to the Respondent, but still the Petitioner challenges the interim award. The sole purpose behind filing this petition was to delay the payment of the amount which is admittedly due from the Petitioner to the Respondent. Petition is, therefore, liable to be rejected.

3. In my opinion, in view of the conduct of the Petitioner, the Petitioner is also liable to be saddled with costs of this petition. The Petition is, therefore, rejected. the Petitioner is directed to pay as and by way of costs of this petition Rs.10,000/- to the Respondent.

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